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Paulo Olavo Cunha | poc@vda.pt

CORPORATE & GOVERNANCE

PROHIBITION ON ISSUE OF BEARER SHARES

Bearer securities have been prohibited under Law 15/2017, of May 3, 2017, published today. The Companies Code and the Securities Code have been amended in order to implement this measure.

Law 15/2017 – which takes effect tomorrow – greatly impacts limited liability companies by shares by eliminating bearer shares and allowing nominative shares only.

Under the new Law:

- It is no longer possible to issue bearer securities (including shares); and
- Existing bearer shares must be converted into nominative shares within 6 months of the new Law's entry into force.

The new Law, which is mostly silent, or unclear at best, on the consequences of its provisions, in effect forces limited liability companies to have nominative shares only.

The Law also foresees publication of a Government statute within 120 days of the new Law's entry into force. The statute is aimed at regulating the conversion of bearer securities, but should also determine that all legal and statutory references to bearer shares, notably as regards the way of circulation of shares, are references to nominative shares, the only kind admitted under the new Law. Also, any references to the issue of bearer shares must be replaced with references to nominative shares.

Bearer shares still existing at this date must be converted into nominative shares within 6 months with all ensuing legal consequences, notable the registry of these shares in the share ledger book, if those shares are titled and have not been admitted to trading on the regulated market, or in the securities register of the issuing company.

Failure to convert bearer securities into nominative securities will entail, as from November 4, 2017:

- Suspension of the right to receive dividends in respect of shares, and interest in respect of bonds, while conversion is pending;
- Prohibition to transfer the bearer securities, which means that any identified transfers are null and void.

The new Law amends a number of provisions of the Codes on bearer securities in general and bearer shares in particular and seeks to take on the consequences of this measure.

Mandatory communications under Article 448 of the Companies Code regarding change of ownership of bearer shares – more honored in the breach than in the observance – will be no longer required after the entry into force of the new Law. This measure creates a legal void regarding documentation of any transfer acts that may take place within the next 6 months, until which the conversion required by law must take place.

VdA remains available for more detailed clarifications on the consequences of the new Law.